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5 Principal, Porgans and Associates
6 25 April 2017

7
8 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

9
10 HEARING IN THE MATTER OF
11 CALIFORNIA DEPARTMENT OF
12 WATER RESOURCES AND UNITED
13 STATES BUREAU OF RECLAMATION
14 REQUEST FOR A CHANGE IN POINT
15 OF DIVERSION FOR CALIFORNIA
16 WATER FIX
17

PATRICK PORGANS REQUEST FOR
RECONSIDERATION OF THE HEARING
OFFICERS' APRIL 23, 2017 REDACTIONS
BY STAFF OF PATRICK PORGANS'
REBUTTAL TESTIMONY, ON THE
POINTS AND AUTHORITY LISTED HEREIN

18
19 To: Felicia Marcus, State Water Board Chair WaterFix Project Co-Hearing Officer WaterFix Project Tam
20 M. Doduc, State Water Board Member Co-Hearing Officer, CWF Team and all Participants
21

22 Protestant Patrick Porgans requests reconsideration of the Hearing Officers' April 23, 2017 Hearing Ruling,
23 and reconsideration of the redactions by the staff Patrick Porgans' testimony, on points and authorities
24 below.
25

26 1. The procedures for redacting Patrick Porgans' testimony were irregular and violated protestant's due
27 process rights, and right to freedom from arbitrary adjudicative procedures. *People v. Ramirez (1979) 25*
28 *Cal.3d 260, 268-69; accord Saleeby v. State Bar of California, (1985) 39 Cal.3d 547, 563-64.*
29

30 2. Protestant has a right to rebut evidence in the hearing under Govt. Code section 11513(b.)
31

32 3. Patrick Porgans' rebuttal testimony and associated exhibits were submitted in advance of the scheduled
33 hearing and within the designated deadline required by the California WaterFix hearing officers under the
34 hearing notice. (Title 23 Cal. Code Regs. Section 648.4 (c).)
35

36 On 13 April 2017, the CWF hearing officers issued a RULING REGARDING REBUTTAL PHASE OF
37 PART 1:
38

This ruling addresses the following issues pertaining to the Part 1 rebuttal phase of the water right
change petition hearing for the California WaterFix Project: (1) admissibility of written rebuttal
testimony, (2) location changes for certain hearing dates, (3) order of presentation for rebuttal
testimony, (4) time limits for rebuttal testimony and cross-examination, sur-rebuttal, and (6) changes
to the hearing team. (p. 1.)
44

45 **Inadmissible Rebuttal Testimony**

46 Patrick Porgans

47
48
49 Patrick Porgans' written rebuttal testimony (**PORGANS EXHIBIT-300**) is very difficult to follow, and
50 significant portions of his testimony do not appear to be relevant to the key hearing issues in Part 1 of
51 the hearing or responsive to another party's case-in-chief. Only Mr. Porgans' testimony concerning SWP
52 and Central Valley Project (CVP) compliance with Delta water quality standards and a small portion of his

1 testimony concerning the issue of whether the proposed changes would initiate a new water right appear to be
2 admissible rebuttal testimony. [Emphasis added]

3
4 We appreciate Mr. Porgans' good faith efforts to comply with hearing requirements, but in spite of those
5 efforts, **his testimony does not comply with procedural requirements. Accordingly, we are directing our**
6 **staff to review Mr. Porgans' written rebuttal testimony to exclude all but the testimony concerning SWP**
7 **and CVP compliance with Delta water quality requirements and the testimony on page 10, lines 13-14.**
8 **Staff will provide the admissible testimony to Mr. Porgans and the other parties by the deadline set**
9 **forth below.** We will expect Mr. Porgans to limit the oral summary of his rebuttal testimony to the admissible
10 testimony. Staff will also advise Mr. Porgans and the other parties which rebuttal exhibits do not appear to be
11 admissible because they are associated with excluded rebuttal testimony. (p. 2) [Emphasis added]

12
13 The case presented by the Petitioners was extensive, and written and oral testimony and associated exhibits
14 clearly covered the topics of water rights and water quality that were in Patrick Porgans' testimony.

15
16 4. CWF Hearing Team staff did not provide revisions to the rebuttal testimony to Mr. Porgans by deadline
17 set forth below.

18
19
20 "Petitioners must notify the hearing team and Service List by **noon, April 19, 2017**, if they have any changes
21 to the panels listed in Attachment B. Otherwise, we will proceed in the above order."

22
23 **5. Stricken testimony is responsive to specific testimony and exhibits in the Petitioner's Case in Chief.**

24
25 **California Water Fix Hearing Team's Deletions and Changes in Porgans Rebuttal Testimony.**

26
27 Page 2: lines 1 thru 21 (including footnotes).

28 Page 3: lines 1 thru 10 (including footnotes).

29 Page 4: parts of line 1 and 2 thru 5 (including footnotes 8 and 9).

30 Page 5: lines 9 ***CWF Hearing Team noted Porgans-302 was renumbered to Porgans-319.**

31 Page 5: lines 14 thru 17.

32 Page 6: line 8 ***CWF Hearing Team Note: Porgans-199 was renumbered as Porgans-305.**

33 Page 6: lines 10 thru 13.

34 Page 7: lines 8 thru 25 (DWR/USBR resorting to unauthorized and SWRCB sanctioned relaxation of Delta
35 water quality standards due to lack of "surplus water" availability in the Delta.)

36 Page 8: lines 1 thru 3.

37 Page 9: lines 10 thru 24 (including footnotes). (SWRCB's Chief Counsel comments on USBR permits.)

38 Page 10: lines 1 thru 12 (concerning SWRCB Water Right Decision 990.) (including footnotes).

39 Page 10: lines 16 thru 18 (including footnotes.)

40 Page 11: lines 1 thru 9 (**Chief Counsel Attwater What SWRCB Permits Approved/Denied in D-990.**)

41 Page 11: Graph depicting Status of Petitions to Change Place of Use and to Add Points of Diversions and of
42 Rediversion, ***CWF Hearing Team *Note. Graphic stricken.**

43 Page 11: lines 10 thru 14 Porgans' Motion to Dismiss.

44 Page 12: lines 1 thru 17 (Verification of Permits Inclusive in water Right Decision 990).

45 Page 15: lines 12 thru 27 (**Cease and Desist Orders Appear to Buy more Time for Petitioners.**)

46 Page 16: lines 1 thru 29 (**Status of Bureau and DWR's requirement to provide water needs for those in**
47 **Area of Origin.**)

48 Page 17: lines 1 thru 10 (**nearly 100 years and requirements still pending.**)

49 Pages 19 thru 25 (CWF Hearing Team ***Note: text on PDF pages 19-25 of this document are not**
50 **considered to be testimony.**

51
52 **6. Deletions by staff appear to have gone beyond direction by Hearing Officer. The following include**

1 Exhibit List, date of submittal, and reference to the exhibit name and number. The ✓ mark indicates

2
3 Exhibits CWF Hearing Officers and staff assert do not appear to be admissible.

4
5 To clarify, hearing staff were directed to advise Mr. Porgans and other hearing parties which
6 of his rebuttal exhibits **do not appear** to be admissible because they are associated with
7 excluded testimony. Below is a list of exhibits that do not appear to be admissible during Part
8 1 rebuttal of the WaterFix hearing (additional exhibits in red, bold, underlined font): Porgans-
9 106, Porgans-118, Porgans-300, Porgans-301, Porgans-303a, Porgans-306, and Porgans-317.
10 [Emphasis added]
11

12 20 Items (20 Files)

<input type="checkbox"/>	Name	Path	Size	Modified	Keywords
<input checked="" type="checkbox"/>	 EII PORGANS-300-CWC.pdf	/	155.7 KB	03/23/17	
<input checked="" type="checkbox"/>	 EII PORGAN-305 USBR VERNALIS VIOLATIONS 1987-1990.docx	/	19.6 MB	03/23/17	
<input type="checkbox"/>	 EII PORGANS 302 M ROOS.pdf	/	166.8 KB	03/23/17	
<input type="checkbox"/>	 EII PORGANS 308 OF SERVICE MAR 2017.docx	/	14.5 KB	03/23/17	
<input type="checkbox"/>	 EII PORGANS-110PABibliography2017.pdf	/	1.8 MB	03/23/17	
<input checked="" type="checkbox"/>	 EII PORGANS-301DeltaLevFails FMA 200709.pdf	/	1.3 MB	03/23/17	
<input checked="" type="checkbox"/>	 EII PORGANS-303A SWPCVP Delta Export 1951-2012 DWR.docx	/	11.0 KB	03/23/17	
<input checked="" type="checkbox"/>	 EII PORGANS-306 MOTIONTODISMISS.pdf	/	0.6 MB	03/23/17	
<input type="checkbox"/>	 EII Porgans-311SOQ.pdf.docx	/	13.1 MB	03/23/17	
<input type="checkbox"/>	 EII Porgans-313Portfolio2017.pdf	/	54.5 MB	03/23/17	
<input type="checkbox"/>	 EII PORGANS-314Biibliography2017.pdf	/	0.6 MB	03/23/17	
<input checked="" type="checkbox"/>	 EII PORGANS-317 TedThomasSWP-CVP - ANNUAL PUMPING 1951-2012.xlsx	/	20.7 KB	03/23/17	
<input type="checkbox"/>	 EII PORGANS-318.pdf	/	90.9 KB	03/23/17	
<input type="checkbox"/>	 EII PORGANS104 Cox Delta Flow Req.pdf	/	1.0 MB	03/23/17	
<input type="checkbox"/>	 EII PorgansSOQ.pdf	/	3.3 MB	03/23/17	
<input type="checkbox"/>	 EII REBUTTAL TESTIMONY PORGANS-310 22 MAR 2017.pdf	/	1.0 MB	03/23/17	
<input type="checkbox"/>	 INDEX DESCRPTION.xlr	/	10.5 KB	03/23/17	
<input type="checkbox"/>	 STATEMENT OF SERVICE PORGANS-311.pdf	/	93.5 KB	03/23/17	
<input type="checkbox"/>	 SWBCWFPORGANSMOTIONTODISMISS.pdf	/	0.6 MB	03/23/17	
<input type="checkbox"/>	 TedThomasSWp - DELIVERIES 2009 TO 2013.xlsx	/	37.0 KB	03/23/17	

14 ✓ PORGANS-106-CALFED Crisis and Conflict Set Stage for “Water Wars”

15
16 EXHIBITS: Previously submitted 30 August 2016 deemed inadmissible

17
18 ✓ PORGANS-4-DWR, Jerry Cox Memo, N. Delta Water Agency Contract - Outflows

19 ✓ PORGANS-5-State Water Project Deliveries, 1967 thru 2015

20 ✓ PORGANS-7-DWR: SWP Water Delivery Reliability – California’s Continuing Drought

21 ✓ PORGANS-106-CALFED Crisis and Conflict Set Stage for “Water Wars”

22 ✓ PORGANS-119-PORGANS has hundreds of violations by DWR and USBR Vernalis and Emmatton

23 Also, it is noted that PORGANS-EII-300 (CWC Section 12934(d)) was changed and replaced by

1 CWF staff with PORGANS-EII-310: Rebuttal Testimony, March 23, 2017.

2
3 7. Conclusion: The deletions and changes made by the CWF Hearing Team have skewed and displaced the
4 Case-in-Chief's fundamental assertions contained in Porgans Rebuttal Testimony, which are as follows:

- 5
6 A. The deletions and reference to the fact that this is not a California Water Fix (CWF) it is a State Water Project
7 Fix, and that the so-called CWF is merely another 55-year in the making rendition of Delta facilities that were
8 authorized by the State Legislature in 1959(California Water Code section 12934(d) Delta Master Levees), and
9 approved by a mandate of the voters in November 1960, which the Department of Water Resources failed to
10 construct, and spent the funds on other SWP financial shortcomings.
11
12 B. Porgans stated to the SWRCB's CWF Hearing Officers and Team at the January 28, 2016 Pre-Conference
13 Hearing that the CWF is, in fact, a SWP Fix.¹
14
15 C. At that same Pre-Conference Hearing Porgans stated publicly that he would not receive a fair hearing from this
16 Board.² Porgans assertions were based on the expedited approach and the narrow scope of the CWF and the
17 Change in the Points of Diversions for the Projects.
18
19 D. The point of fact is that the Delta is not broken; however, it has been the recipient of a plethora of DWR's
20 broken promises; i.e., the voter-defeated Peripheral Canal in 1982, The 1994 Bay-Delta Accord, the Failed
21 CalFed process in the early 2000's. Those failures are a testament of DWR's failed attempts of supplanting
22 Delta facilities authorized in 1959.
23
24 E. Deleting all references to Water Right Decision 990 eliminates the fact that some of the permits that are being
25 considered by the CWF Hearing Officers and Team may not be valid, according to government documents.
26
27 F. Ignoring or dismissing the fact that changes in the point of diversions could provide significant "carriage
28 water" savings required to meet water supply and water quality standards in the southern portion of the Delta
29 needs to be addressed.
30
31 G. All models are wrong; page 127, lines 3 thru 17.³
32
33 H. **Jennifer Pierre:** MR. PORGANS: You've had a lot of experience. You came -- You
34 went from BDCP over to -- over to the CWF. WITNESS PIERRE: I did, yes. MR.
35 PORGANS: Yeah. Were you here when they made that decision to call it the
36 California WaterFix? WITNESS PIERRE: Actually, I was not. I was on medical
37 leave at the time.⁴
38
39 I. MR. PORGANS: I do have one last question. Do you know how long this so-called
40 Delta Fix has been in the process? WITNESS BEDNARSKI: No, I don't.⁵ MR.
41 PORGANS: Thank you. Again, I can't get answers.
42
43 J. Porgans **DID NOT** Dismiss any of his testimony, exhibits or Motion to Dismiss.
44
45 K. **Notice of Availability and Statement of Notice** included.

¹ California State Water Resources Control Board Pre-Hearing Conference: In the Matter of: California Water Fix Pre-Hearing Conference/CA EPA Coastal Hearing Room, 1001 I Street, Second Floor, Sacramento, California, Thursday, January 28, 2016, Reported by: Peter Perry, page 60, lines 18 thru 22, page 62, lines 3 thru 6.

² *Ibid*, page 62, lines 1 thru 6.

³ California State Water Resources Control Board Hearing Part 1A, Transcript, Volume 16, held at 1001 I Street, Second Floor, Sacramento, California, Friday, August 26, 2016, Reported by: Deborah Fuqua, CSR No. 1248, page 127, lines 3 thru 17.

⁴ California State Water Resources Control Board, PART 1A, Volume 5, Reported By: Candace Yount, CSR No. 2737, RMR, CCRR, Certified Realtime Reporter, Thursday, August 4, 2016, Page 152, Line 21 thru 25 and page 153, lines 1 thru 19.

⁵ California State Water Resources Control Board Hearing, PART 1A, Tuesday, August 9, 2016 17 9:00 A.M., Volume 7, Reported By: Candace Yount, CSR No. 2737, RMR, CCRR, page 207, lines 15 thru 23.

1 **PATRICK PORGANS, PORGANS/ASSOCIATES**

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6 Party to WaterFix Hearing

7 Principal, Porgans and Associates

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NOTICE OF AVAILABILITY AND
STATEMENT OF SERVICE

20 To: Felicia Marcus, State Water Board Chair WaterFix Project Co-Hearing Officer WaterFix Project
21 Tam M. Doduc, State Water Board Member Co-Hearing Officer, CWF Team and all Participants

22 I hereby certify that I have this day submitted to the State Water Resources Control Board and caused
23 a true and correct copy of the following documents:

24 **The following documents have been uploaded to the FTP site;**

25 Request for Reconsideration of the Hearing Officers' April 23, 2017 Redactions by Staff of Patrick Porgans'
26 Rebuttal Testimony, On the Points and Authority Listed Herein

27 Notice of Availability and Statement of Service

28 to be served by Electronic Mail (email) and by reference to the FTP site per the Hearing Ruling, in parts due
29 to server limitations, upon the parties listed in the CWF Hearing Officers' 21 April 2017 current mailing list.

30 **Please discard earlier rendition, as this final rendition includes Notice of Availability, and Statement of**
31 **Service.**

32 **P.S. Porgans DID NOT Withdraw Any of His Rebuttal Testimony, Exhibits or Motion to Dismiss.**